

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* TOWERS/KING, Minors.

UNPUBLISHED  
October 18, 2016  
No. 332678  
Jackson Circuit Court  
Family Division  
LC No. 1999-093220-NA

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Before: K. F. KELLY, P.J., and O'CONNELL and BOONSTRA, JJ.

PER CURIAM.

Respondent, the mother of minor girls AT and HK,<sup>1</sup> appeals by right the order of the trial court terminating her parental rights, following an initial dispositional hearing, to both children pursuant to MCL 712A.19b(3)(b)(ii),<sup>2</sup> MCL 712A.19b(3)(b)(g), and MCL 712A.19b(3)(b)(j). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent has a long history of involvement with Children's Protective Services (CPS), beginning in 1998. Relative to the instant case, petitioner filed a petition with the trial court on February 3, 2016, seeking removal of all four of respondent's children and termination of respondent's parental rights.<sup>3</sup> The petition alleged that CPS had received a complaint that respondent's son, WB, had tried to have AT perform oral sex on him, and that this was witnessed by a family friend, Eric, who was a registered sex offender. The petition also alleged that respondent was aware of WB "touching people inappropriately in the past." The petition stated that both AT and HK had been forensically interviewed at the Child Advocacy Center (CAC),

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<sup>1</sup> AT and HK have different fathers. The parental rights of their fathers were not terminated in the proceedings below.

<sup>2</sup> Although the amended petition cites the relevant statutory subsection as MCL 712A.19b(3)(b)(iii) (as did the original petition), the text accompanying the citation is the exact language of subsection (b)(ii). Respondent admits on appeal that it was "probably meant to be cited as MCLA 19b(3)(b)(ii)."

<sup>3</sup> Respondent's other two minor children, MH and WB, were also subject to the removal orders and proceedings below, but respondent's rights to them were not terminated in the same order and they are not the subject of this appeal.

and that AT had stated that WB had tried to pull her and her sister's pants down, had shown them his penis, and had tried to put his penis in their mouths. The petition alleged that HK had disclosed at her interview that she had observed WB try to put his penis in AT's mouth, that she had seen WB insert his penis into AT's vagina, and that WB had tried to insert his penis into her vagina. The petition also alleged that respondent's son MH was interviewed at CAC and disclosed that WB had penetrated his anus with his penis when MH was 9 years old; MH further indicated that he had told respondent about the incident and that she did not believe him. MH also stated that he was abused by three adult men who were friends of respondent, including a man named Geoffrey, another registered sex offender. The petition further alleged that respondent had recently married a man named Matthew, yet another registered sex offender. Finally, the petition alleged that respondent had been the subject of over 50 CPS complaints since 1998 and had been provided with numerous services. The trial court entered an order removing the children from respondent's home on the same day. HK and AT were removed from respondent's home; AT was placed with her father, while HK was placed in non-relative foster care. The trial court authorized the petition on February 8, 2016.

Petitioner filed an amended petition on March 16, 2016, alleging, in addition to the allegations contained in the original petition, that CPS had received a complaint that HK was exhibiting sexualized behavior in her foster home and, during a second CAC interview, had disclosed that respondent's boyfriend Matthew had "put his private spot into her private spot." HK stated at the interview that she told respondent about this, and that respondent told Matthew not to do it again.

A combined adjudication trial and dispositional hearing was held on April 12, 2016. Before trial, the trial court granted petitioner's "tender years" motion to allow statements made by HK and AT at their forensic interviews entered into the record. Ruth Staniszewski, the forensic interviewer who had interviewed the children, testified that HK and AT had described the incidents involving WB as stated above. At trial, MH also testified that WB had inserted his penis into his anus when he was 9. MH testified that he told respondent about it a week later, and that "she thought I was lying because I said it when I was already angry about something else that had happened." MH did not recall respondent talking to anyone else about his disclosure. MH also testified that he had seen WB grabbing the buttocks of AT and HK and that he had told "someone" about it, although he did not know whether respondent knew about it or saw it.

MH's juvenile probation officer testified that respondent had spoken to him in April 2015 about MH's statement that he had been raped by WB. The probation officer testified that respondent had told him that MH had "mentioned" being raped by WB three or four years before, and that she stated that she had told MH that rape was a strong word and that he shouldn't use it unless he was positive that it was what he meant. Respondent told the probation officer that MH had "dropped it at that point."

Julie Ann Holmes, the CPS worker who filed the petition, testified that respondent had admitted that she was aware of MH's allegation against WB and did not report it to law enforcement or petitioner. Holmes also testified consistent with the other allegations in the petition. Holmes opined that it was in the children's best interests to terminate respondent's parental rights, due to the sexual abuse of HK and AT, the fact that the children were exhibiting

sexual behavior in their placements and the risk that they would be abused again if returned to respondent's home. Holmes further testified that respondent had been offered extensive services in the past over her long history of involvement with CPS, and that Holmes was not aware of any services at this point that could be provided to keep HK and AT safe.

Respondent testified that she called the police in response to the incident in which WB had tried to have AT perform oral sex on him. She testified that when MH disclosed WB's abuse to her, she told him that "if he [WB] did it, you should talk about it. If he didn't, you shouldn't." She testified that MH did not say anything else about the incident until the preceding year, at which point she told MH's probation officer about the incident with WB and about MH's allegation that an adult friend of respondent's had sexually abused him. She testified that she spoke to CPS on the phone about MH's disclosures and that "[n]othing was followed up." Respondent also testified that she was given a "safety plan" (presumably by petitioner) when she married Matthew, which required that Matthew would not babysit her kids or be alone with them; respondent testified that she followed that plan. At the time of trial, respondent had filed for divorce from Matthew. Respondent further testified that WB had been molested by his cousin Jimmy, although she was unaware whether WB had ever received specific counseling to address the abuse. Respondent testified that WB no longer lived at her house.

The trial court found that sufficient evidence had been presented to take jurisdiction over AT and HK based on their disclosures regarding abuse by WB. The trial court further found that petitioner had presented clear and convincing evidence that the children would be exposed to future sexual abuse or other harm if returned to respondent's care, and that therefore at least one statutory ground for termination had been proven. The trial court further found that termination of respondent's parental rights was in the children's best interest, stating that "[t]here aren't any services that can fix such terribly poor judgment about bringing men into [respondent's] children's lives with history of sexual abuse and taking even the most basic precautions to make sure these children are protected," and that the children "deserve to live in an environment that is not so highly sexually charged as the one that they've been raised in up to this point."

This appeal followed.

## II. STANDARD OF REVIEW

In termination proceedings, we review for clear error both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the court's determination of the children's best interests. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K).

### III. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred by determining that statutory grounds for termination were proven by clear and convincing evidence. We disagree. The termination order does not indicate the specific statutory ground(s) for termination; nor did the trial court explicitly state on the record which statutory grounds had been proven by clear and convincing evidence. Nonetheless, the trial court found that the children were at substantial risk of sexual abuse or other harm if returned to respondent. As stated above, the petition alleged that the statutory grounds for termination found in MCL 712A.19b(3)(b)(ii), MCL 712A.19b(3)(b)(g), and MCL 712A.19b(3)(b)(j) existed. We conclude that the trial court did not err in determining that any of these statutory grounds had been proven by clear and convincing evidence.

MCL 712A.19b(3)(b)(ii) states that a statutory ground for termination exists when “[t]he parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.” Respondent admits that WB sexually abused HK and AT, but argues that no evidence was presented indicating that respondent had an opportunity to prevent the abuse. Respondent’s argument is, frankly, incredible. MH informed respondent that WB had raped him. Respondent minimized this disclosure, made it clear to MH that further discussion was pointless, and did nothing about it for *years* while continuing to allow WB access to his younger siblings. Respondent was unaware, and seemed unconcerned about, whether WB had ever received treatment for his own sexual abuse at the hands of his cousin. Further, MH had told “someone” living with them at the time that WB was grabbing the buttocks of his younger sisters, although he was not certain whether respondent knew about it. In sum, and without even considering the disclosures of sexual abuse at the hands of adults whom respondent had allowed to be around her children, plentiful evidence existed that respondent had failed to prevent AT and HK from being sexually abused. And, as discussed below, such evidence also supports the conclusion that a reasonable likelihood exists that AT and HK would suffer further abuse if returned to respondent’s care. We thus conclude that the trial court did not clearly err in finding this statutory ground proven by clear and convincing evidence. *Rood*, 483 Mich at 90-91.

MCL 712A.19b(3)(b)(g) states that a statutory ground for termination exists when “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.” MCL 712A.19b(3)(b)(j) states that a statutory ground for termination exists when “[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.” For both of these statutory grounds, the lack of proper care and custody and risk of harm at issue were essentially the risk of further sexual abuse. Respondent argues that WB no longer lives in her home and that she has filed for divorce from Matthew. However, the record was replete with evidence that respondent repeatedly exposed her children to sex offenders and that all of her children had reported sexual abuse, some by multiple perpetrators. Again, respondent took no action in response to MH’s disclosure that he had been raped by another of her children until years later, at which time she only reported it to the victim’s probation officer. Respondent was not aware whether WB had received specific counseling regarding his own victimization, and repeatedly allowed him the opportunity to victimize his younger siblings. Her

children were often left in the care of convicted sex offenders. Respondent's actions and inactions demonstrate that there was more than a reasonable likelihood that AT and HK would again suffer sexual abuse if returned to her care (which would likely be minimized, dismissed, or ignored by respondent), and that there was no reasonable expectation that she could provide proper care and custody considering the children's ages. The trial court did not clearly err in finding these statutory grounds proven by clear and convincing evidence. *Rood*, 483 Mich 73, 90-91.

### III. BEST-INTEREST DETERMINATION

Respondent also argues that the trial court clearly erred when it determined that termination was in the children's best interests. Again, we disagree. A trial court's decision that termination of a parent's rights is in the children's best interests must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Respondent essentially repeats the argument that WB's absence from the home and respondent's pending divorce from Matthew rendered the trial court's holding erroneous. Respondent also argues that no evidence was presented that the children's basic needs were not being met. We note that Holmes actually did testify that AT and HK would not sleep in their beds at their placements because "they have never had a bed provided to them during their childhood." Regardless of that testimony, the fact remains that evidence presented at trial shows overwhelmingly that the children were not provided with the most basic of needs—a home free from the danger of sexual abuse and the protection of a parent from such abuse. Holmes also testified that AT and HK were already exhibiting sexually inappropriate behaviors. In light of the wealth of the evidence presented, the trial court's finding that the children deserved an environment that was not so "highly sexually charged" was supported by a preponderance of the evidence and was not erroneous. *Moss*, 301 Mich App at 90. Further, although the trial court did not explicitly address all of the factors we mentioned in *In re Olive/Metts*, 297 Mich App 35, 41-42, the trial court did consider respondent's parenting ability with regard to keeping her children free from sexual harm, the children's need for permanency and stability (impossible to find in a home so fraught with the risk of repeated sexual abuse), and the advantages of a foster or other home (in contrast to respondent's home) in providing an environment that was not so "highly sexually charged."<sup>4</sup> *Id.* In light of the overwhelming strength of these factors, the trial court did not err by failing to explicitly consider the bond between the children and respondent, which factor, in any event, respondent did not argue or support with evidence at the dispositional

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<sup>4</sup> The termination order and post-termination dispositional orders state that AT was to remain placed with her father, while HK was to remain in foster care pending further proceedings and an investigation into the appropriateness of placement with her father.

hearing. See *Olive/Metts*, 297 Mich App at 41-42 (stating that the trial court “may” consider the child’s bond to the parent); *Rood*, 483 Mich 73, 90-91.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Peter D. O’Connell  
/s/ Mark T. Boonstra